

12-23-2003



102630239

Docket No.:

2035209-0004

Tab settings

To the Director of the United States Patent and Trademark Office

Attached original documents or copy thereof.

1. Name of conveying party(ies):

Wells Fargo Bank, National Association

12.19.03

- ☐ Individual(s) ☒ Association
☐ General Partnership ☐ Limited Partnership
☐ Corporation-State
☐ Other

Additional names(s) of conveying party(ies) ☐ Yes ☒ No

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
☒ Security Agreement ☐ Change of Name
☐ Other

Execution Date: December 5, 2003

2. Name and address of receiving party(ies):

Name: Bank of America, N.A. (as Collateral Agent)

Internal Address: IL1-231-08-30

Street Address: 231 S. LaSalle Street

City: Chicago State: IL ZIP: 60604

- ☐ Individual(s) citizenship
☒ Association
☐ General Partnership
☐ Limited Partnership
☐ Corporation-State
☐ Other

If assignee is not domiciled in the United States, a domestic designation is ☐ Yes ☐ N
(Designations must be a separate document from Additional name(s) & address(es) ☐ Yes ☐ N

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)

As listed in the schedule to the Security Agreement

B. Trademark Registration No.(s)

As listed in the schedule to the Security Agreement

Additional numbers ☐ Yes ☐ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Janet P. Peyton, Esquire

Internal Address:

McGuireWoods LLP

Street Address: One James Center, 901 East Cary Street

City: Richmond State: VA ZIP: 23219

6. Total number of applications and registrations involved:

84

7. Total fee (37 CFR 3.41): \$ 2,115.00

- ☒ Enclosed
☐ Authorized to be charged to deposit account

8. Deposit account number:

OPR/FINANCE
DEC 19 AM 8:53

12/22/2003 DBYRME 00000148 2426211

01 FC:8521
02 FC:8522

40.00 OP
2075.00 OP

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Janet P. Peyton, Esquire

Name of Person Signing

Signature

December 18, 2003

Date

Total number of pages including cover sheet, attachments, and

9

SCHEDULE

MARK	REGISTRATION NUMBER	ISSUE DATE	RENEWAL DATE	SERIAL NUMBER	FILING DATE	COUNTRY
Amazon Storm	2,426,211	2/6/2001	2/6/2011	75/674,135	4/5/1999	United States
Big Bopper	2,031,929	1/21/1997	1/21/2007	75/026,991	12/4/1995	United States
Big Dipper				75/047,601	1/24/1996	United States
Big Double						United States
Big Mississippi Mud	1,892,725	5/2/1995	5/2/2005	74/382,354	4/26/1993	United States
Big Neapolitan	1,882,388	3/7/1995	3/7/2005	74/394,371	5/25/1993	United States
Big Vanilla	1,918,207	9/12/1995	9/12/2005	74/394,663	5/26/1993	United States
Blue Bunny (word mark)	1,528,443	3/7/1989	3/7/2009	650,971	3/23/1987	United States
Blue Bunny Wells Logo - New Logo (with color)	2,243,321	5/4/1999	5/4/2009	75-243,317	2/18/1997	United States
Blue Bunny Wells Logo - New Logo (without color)	2,243,320	5/4/1999	5/4/2009	75-243,316	2/18/1997	United States
Bomb Pop	948,643	12/12/1972	12/12/2002	72-404,222	10/4/1971	United States
Bomb Pop Design (Missile/Rocket)	1,127,938	12/18/1979	8/5/2009	73-091,598	6/25/1976	United States
New Bomb Pop & Design						United States
Bomb Pop Jr.	1,026,325	12/2/1975	12/2/2005	73-039,941	12/19/1974	United States
Bomb Squad	2,492,944	9/25/2001	9/25/2011	75/438,933	2/23/1998	United States
Bombstik	1,017,720	8/5/1975	8/5/2005	72-450,134	3/1/1973	United States
Bubble Gum Bomb	1,176,416	11/3/1981	11/3/2001	261,425	5/9/1980	United States
Bunny Tracks	2,478,236	8/14/2001	8/14/2011	78-016,752	7/14/2000	United States
Caramel Apple Treats	2,235,521	3/23/1999	3/23/2009	75-396,959	11/26/1997	United States
Cherry Bomb & Design	1,975,586	5/28/1996	5/28/2006	74-368,699	3/17/1993	United States
Chips Galore!	2,239,774	4/13/1999	4/13/2009	75-376,311	10/20/1997	United States
Choco Malt	2,083,753	7/29/1997	7/29/2007	75-132,830	7/11/1996	United States
Citrus Lites	1,852,520	9/6/1994	9/6/2004	74-315,225	9/21/1992	United States
Citrus Snacks	1,862,670	11/15/1994	11/15/2004	74-463,448	11/26/1993	United States
Clammy The Creep	1,153,320	5/5/1981	5/5/2001	229,716	8/31/1979	United States
Confections & Cream	2,526,455	1/8/2002	1/8/2007	75-635,000	2/3/1999	United States
COOL JUICE	1,870,729	12/27/1994	12/27/2004	74-430,759	8/31/1993	United States
Cool Tubes	1,861,083	11/1/1994	11/1/2004	74-430,670	8/31/1993	United States
Crazy Cups	2,728,109	6/17/2003	6/17/2008	78-045,662	1/30/2001	United States
Crunch Bomb	1,849,522	8/9/1994	8/9/2004	74-359,576	2/16/1993	United States
Cyberbyte	2,031,969	1/21/1997	1/21/2007	75-031,532	12/12/1995	United States
Dairy Innovations				78-025,446	9/12/2000	United States
Dessert Sensations	2,375,344	8/8/2000	8/8/2010	75-812,480	9/30/1999	United States

MARK	REGISTRATION NUMBER	ISSUE DATE	RENEWAL DATE	SERIAL NUMBER	FILING DATE	COUNTRY
Double Dip	2,216,588	1/5/1999	1/5/2009	74-592,160	10/28/1994	United States
Dream Bar	2,264,930	7/27/1999	7/27/2009	75-510,928	6/30/1998	United States
Experience Our Passion!					11/12/2003	United States
Extremes	2,656,567	12/3/2002		78-027,207	9/22/2000	United States
Friazos	2,773,702	10/14/2003	10/14/2013	78/185/607	11/11/2002	United States
Frio Grande	2,136,795	2/17/1998	2/17/2008	75-164,504	9/12/1996	United States
Frooty Patooty	1,039,823	5/18/1996	5/18/2006	73-060,999	8/21/1975	United States
Fudge Bomb	1,799,557	10/19/1993	10/19/2003	74-359,042	2/16/1993	United States
Health Smart	2,075,920	7/1/1997	7/1/2007	74-201,424	9/9/1991	United States
Hi Lite	1,167,538	9/1/1981	9/1/2001	73-210,277	4/4/1979	United States
Jazzberry	1,187,029	1/19/1982	1/19/2002	297,167	2/17/1981	United States
Jungle Adventures	2,369,479	7/18/2000	7/18/2010	75-674,134	4/5/1999	United States
Jungle Paradise	2,384,211	9/5/2000	9/5/2010	75-674,133	4/5/1999	United States
Krunch Sticks	2,053,766	4/22/1997	4/22/2007	74-513,450	4/18/1994	United States
Lite 85	1,536,561	4/25/1989	4/25/2009	747,047	8/17/1988	United States
Made By People Who Love It As Much As You Do	2,469,853	7/17/2001	7/17/2011	78-002,576	4/4/2000	United States
Merritt and Design	1,334,575	5/7/1985	5/7/05	73-503,824	10/15/1984	United States
Missile Fudge	1,877,791	2/7/1995	2/7/2005	74-378,218	4/12/1993	United States
Mr. Fun	848,275	4/30/1968	4/30/2008	263,852	2/2/1967	United States
Mystery Mouth	1,945,442	1/2/1996	1/2/2006	74-604,665	11/30/1994	United States
Nutrition Plus	2,228,552	3/2/1999	3/2/2009	75-437,878	2/20/1998	United States
Nuts Up?	2,701,396	3/25/2003	3/25/2013	78-031,607	10/20/2000	United States
Nutt'n Better	1,909,404	8/1/1995	8/1/2005	74-513,482	4/18/1994	United States
Panda Bar				74-525,820	5/17/1994	United States
Peanut Butter Panic				78-022,088	8/21/2000	United States
Peanut Butter Stick	1,920,008	9/19/1995	9/19/2005	74-463,203	11/26/1993	United States
Peanut Stick (called Crazy even though crazy is not part of the mark)	1,144,421	12/23/1980	12/23/2010	73-162978	3/20/1978	United States
Polar Treats	926,505	1/4/1972	1/4/2002	72-353,940	3/12/1970	United States
Polar Treats and Design	1,946,861	1/9/1996	1/9/2006	74-631,127	2/7/1995	United States
Rhapsody				78-045,817	1/31/2001	United States
Scoop Troop				78-043,912	1/19/2001	United States
Screamers	2,232,584	3/16/1999	3/16/2009	75-116,311	6/10/1996	United States
Sidewalk Sundae						
Silo Sam	1,172,479	10/6/1981	10/6/2001	229,717	8/31/1979	United States
Skedaddles				78/284,916	8/8/2003	United States
Slamma Jamma	1,938,499	11/28/1995	11/28/2005	74-605,604	11/30/1994	United States
Slush Pops	1,790,566	8/31/1993	8/31/2003	74-326,776	10/30/1992	United States
Smoothers 'N Shakers	2,409,266	11/28/2000	11/28/2010	75-571,736	10/16/1998	United States

Space Face	2,200,633	10/27/1998	10/27/2008	75-316,864	6/30/1997	United States
Speedway Sundae	2,480,756	8/21/2001	8/21/2011	75-830,063	11/9/1999	United States
Sundae Crunch	1,941,953	12/19/1995	12/19/2005	74-388,446	5/10/1993	United States
Super 2	1,939,493	12/5/1995	12/5/2005	74-566,498	8/29/1994	United States
Super Chiller Pop	1,944,943	1/2/1996	1/2/2006	74-474,833	12/28/1993	United States
Super Freeze	2,022,807	12/17/1996	12/17/2006	74-551,433	7/20/1994	United States
Sweet Freedom					10/21/2003	United States
The Champ!	2,021,396	12/3/1996	12/3/2006	74-651,386	3/24/1995	United States
Three Color Rocket	1,039,931	5/18/1976	5/18/2006	72-425,635	5/26/1972	United States
Wacky Waffle	1,939,734	12/5/1995	12/5/2005	74-604,735	11/30/1994	United States
Wells'	1,494,418	6/28/1988	6/28/2008	690,489	10/19/1987	United States
Wells' Blue Bunny "T.V. Logo" with color	1,875,414	1/24/1995	1/24/2005	74-496,360	2/28/1994	United States
Wells' Blue Bunny "T.V. Logo" with no color	1,875,413	1/24/1995	1/24/2005	74-496,328	2/28/1994	United States

**AMENDED AND RESTATED
INTELLECTUAL PROPERTY SECURITY AGREEMENT**

This AMENDED AND RESTATED INTELLECTUAL PROPERTY SECURITY AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Amended and Restated IP Security Agreement**") dated December 5, 2003, is made by the Persons listed on the signature pages hereof (collectively, the "**Grantors**") in favor of Bank of America, N.A., as collateral agent (the "**Collateral Agent**") for the Secured Parties (as defined in the Credit Agreement referred to below).

(1) This Amended and Restated IP Security Agreement amends and restates the Intellectual Property Security Agreement dated as of May 8, 2003 made by the grantors in favor of Wells Fargo Bank, National Association, as collateral agent for the Secured Parties, recorded with the U.S. Patent and Trademark Office on June 3, 2003 at Reel/Frame: 2742/0886.

(2) Bank of America, N.A., as Administrative Agent (the "**Administrative Agent**"), Collateral Agent (the "**Collateral Agent**"), Swingline Lender, and LC Issuer and certain banks as lenders (the "**Lenders**") have entered into a Credit Agreement dated as of the date hereof with the Borrower (said Agreement, as it may hereafter be amended or otherwise modified from time to time, being the "**Credit Agreement**"), pursuant to which the Lenders have made, or have agreed to make loans to the Borrower in an aggregate amount of \$75,000,000, on and subject to the terms and conditions set forth therein.

(3) Pursuant to a Note Purchase Agreement dated as of the date hereof (the "**2003 Note Purchase Agreement**") the Borrower is issuing an aggregate amount of \$75,000,000 of its 6.53% senior notes, due December 1, 2013 (the "**2003 Notes**") to the 2003 Note Holders (the "**2003 Note Holders**").

(4) In addition, the Borrower, certain guarantors and certain noteholders (the "**2002 Note Holders**") entered into Note Purchase Agreements, each dated June 17, 2002 (said Note Purchase Agreements, as amended and restated as of the date hereof and as hereafter amended or otherwise modified from time to time, being, collectively, the "**2002 Note Purchase Agreement**"), whereby the 2002 Note Holders purchased notes from the Borrower in an aggregate amount of \$50,000,000 (the "**2002 Notes**"), on and subject to the terms and conditions set forth therein.

(5) The 2003 Note Holders, the 2002 Note Holders, the Administrative Agent, the Borrower, the Collateral Agent and Bank of America, N.A., as Issuing Bank (the "**Issuing Bank**") have entered into an Amended and Restated Intercreditor and Collateral Agency Agreement (the "**Amended and Restated Intercreditor Agreement**") dated as of the date hereof to provide for their respective rights in respect of the Collateral Documents (as defined therein), as security for (i) all Obligations owed by the Borrower to the Lenders, the L/C Issuer, the Swingline Lender or the Administrative Agent as defined in the Credit Agreement and (ii) all obligations owed by the Borrower to the 2002 Note Holders and the 2003 Note Holders in respect of the 2002 Note Purchase Agreement and the 2003 Note Purchase Agreement, respectively (the obligations in (i) and (ii) being, together, the "**Obligations**").

(6) Pursuant to an Assignment and Assumption Agreement, dated as of the date hereof (the "**Assignment Agreement**") Wells Fargo Bank, National Association, as Collateral Agent from May 8, 2003 until the date hereof, is assigning to Bank of America, N.A. all of its rights, obligations and liabilities first accruing from and after the date hereof (subject to the indemnification contained therein) as Collateral Agent and Bank of America, N.A. is assuming those rights, obligations and liabilities of Wells Fargo Bank, National Association, as Collateral Agent (subject to the indemnification contained in the Assignment Agreement).

(7) Pursuant to the Credit Agreement, the Grantor and certain other Persons have executed and delivered that certain Amended and Restated Security Agreement dated as of the date hereof, made by the Grantor and such other Persons to the Collateral Agent (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Amended and Restated Security Agreement**").

(8) Pursuant to the Senior Documents (as hereinafter defined), the Grantors are entering into this Agreement in order to grant to the Collateral Agent for the ratable benefit of the Secured Parties a security interest in the Collateral (as hereinafter defined).

(9) It is a condition precedent to, and a material inducement for the provision of loans and the purchase of notes, as the case may be (the "**Loans**"), under the Credit Agreement, the 2002 Note Purchase Agreement and the 2003 Note Purchase Agreement (together with any existing or subsequent Swap Contract (as defined in the Credit Agreement, the "**Senior Documents**") that the Grantors shall have executed and delivered this Agreement.

WHEREAS, under the terms of the Amended and Restated Security Agreement, the Grantors have granted to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest in, among other property, certain intellectual property of the Grantors, and have agreed as a condition thereof to execute this Amended and Restated IP Security Agreement for recording with the U.S. Patent and Trademark Office, the United States Copyright Office and other governmental authorities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Grantor agrees as follows:

SECTION 1. Grant of Security. Each Grantor hereby grants to the Collateral Agent for the ratable benefit of the Secured Parties a security interest in all of such Grantor's right, title and interest in and to the following (the "**Collateral**");

(i) the trademark and service mark registrations and applications set forth in the Schedule hereto (provided that no security interest shall be granted in United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law), together with the goodwill symbolized thereby (the "**Trademarks**");

(ii) all copyrights, whether registered or unregistered, now owned or hereafter acquired by such Grantor (the "**Copyrights**");

(iii) all extensions and renewals of any of the foregoing, all rights in the foregoing provided by international treaties or conventions, all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto;

(iv) any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages; and

(v) any and all proceeds of, collateral for, income, royalties and other payments now or hereafter due and payable with respect to, and supporting obligations relating to, any and all of the Collateral of or arising from any of the foregoing.

SECTION 2. Security for Obligations. The grant of a security interest in, the Collateral by each Grantor under this Amended and Restated IP Security Agreement secures the payment of all Obligations of such Grantor now or hereafter existing under or in respect of the Credit Documents, whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, premiums, penalties, fees, indemnifications, contract causes of action, costs, expenses or otherwise.

SECTION 3. Recordation. Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner for Trademarks and any other applicable government officer record this Amended and Restated IP Security Agreement.

SECTION 4. Execution in Counterparts. This Amended and Restated IP Security Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 5. Grants, Rights and Remedies. This Amended and Restated IP Security Agreement has been entered into in conjunction with the provisions of the Amended and Restated Security Agreement. Each Grantor does hereby acknowledge and confirm that the grant of the security interest hereunder to, and the rights and remedies of, the Collateral Agent with respect to the Collateral are more fully set forth in the Amended and Restated Security Agreement, the terms and provisions of which are incorporated herein by reference as if fully set forth herein.

SECTION 6. Governing Law. This Amended and Restated IP Security Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois.

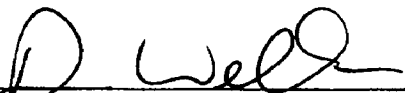
SECTION 7. Amended and Restated Intercreditor Agreement. As between the Collateral Agent and the Secured Parties (but not the Grantors), in the event of any conflict between the terms of this Agreement (including, without limitation, Section 16 hereunder) and the terms of the Amended and Restated Intercreditor Agreement, the terms of the Amended and Restated Intercreditor Agreement shall prevail.


SECTION 8. Acknowledgment of Receipt. Each Grantor hereby acknowledges receipt of a copy of this Agreement and each other Credit Document, Collateral Document and agreement executed by such Grantor in connection with this Agreement.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

IN WITNESS WHEREOF, each Grantor has caused this Amended and Restated IP Security Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

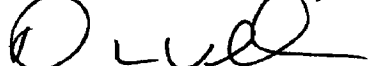
WELLS DAIRY, INC.

By 
Daniel W. Wells
President

By 
Thomas J. Ferree
Vice President – Finance, Chief Financial
Officer


Address for Notices:
800 Lincoln Street SW
LeMars, Iowa 51301

BLUE BUNNY INVESTORS, INC.

By 
Daniel W. Wells
President

Address for Notices:
800 Lincoln Street SW
LeMars, Iowa 51301

BLUE BUNNY INTERNATIONAL, INC.

By 
Thomas J. Ferree
Vice President – Finance, Chief Financial
Officer

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